

Doing Without Mercy

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Philosophers are rarely in agreement as to the explanation of moral concepts. Yet, I doubt whether many concepts have been a matter of such deep and basic controversy as that of mercy, a controversy both as to its moral status, as well as to its very nature. This article seeks to suggest a new, rather radical way of understanding this concept. In fact, it suggests that our moral vocabulary can do without it.

The basic structure of my argument is as follows. First, I review the main points of disagreement as to the nature of mercy, in order to bring the reader to sense the highly problematic nature of this concept. I then examine several definitions of merciful acts and seek to show that none of them is acceptable. This brings us to the conclusion that mercy is best understood as a quality of persons, not as a quality of acts. Finally, I examine the implications of this conclusion for the alleged conflict between mercy and justice. I contend that if we adopt an Aristotelian view on the nature of compassion, this conflict disappears.

Before I start my discussion, however, a methodological clarification is in order. It is my contention that in offering a theory about the meaning of value concepts we need to account not only for some linguistic intuitions, but for a variety of considerations, empirical, normative, and others. If a certain value concept is interpreted in such a way that, for instance, makes it inconsistent with some other important values, this would constitute a fair reason to revise this interpretation and to adopt a better one.¹ Though a full harmony between our values might prove unattainable, it would no doubt be to the advantage of an ethical theory if it could minimize the number and gravity of conflicts as much as possible,

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and in any case, present them as contingent, not as necessary. Thus, the present study acknowledges that in common usage mercy is often referred to as an independent virtue, but, nevertheless, argues mainly on the basis of various *normative* considerations, that this approach is mistaken. Why this is so will emerge, so I hope, in the course of the article.

I am usually suspicious about attempts to solve philosophical problems by abandoning the concept that is the cause of the trouble. Somehow this seems to me too easy a way out. I ask my readers to be less suspicious than I am and more open to the solution I propose.

I

Let us begin our discussion by looking at the main difficulties in explaining the concept of mercy. In the first place, it is unclear what kind of relationship exists between mercy and obligation, or in other words, what the "deontological status" of mercy is. On the one hand, showing mercy is considered morally praiseworthy. On the other, there seems to be something odd in one claiming a *right* to mercy. So the natural conclusion seems to be that mercy is supererogatory; it lies beyond one's duty. Hence, like all supererogatory acts, showing mercy is morally optional yet highly valuable. It is a kind of a gift, or a favor, that one person (whom I shall call the benefactor, or "the subject of mercy") gives another (the beneficiary, "the object of mercy"). This view of mercy is held by H. Scott Hestevold who argues that "no act which an agent is *obligated* to perform can be an act of mercy; and, since no merciful act is obligatory, showing mercy can only be supererogatory" (Hestevold 1985, 285). This view is also held by P. Twambley who believes that those who try to interpret mercy (or forgiveness) in terms of obligations suffer from "an obsession with duty and obligation" (Twambley 1976, 90) preventing them from seeing that

"[m]any highly moral actions are not *demande*d of one; they are not *earned* by their recipients, nor are they acts to which one is *bound*. Rather they are *gifts*, actions freely performed, sacrifices freely made. Eminent among these are the gifts of mercy and forgiveness." (Twambley 1976, 90)

If mercy is supererogatory this implies, first, that no one is blameworthy for not showing it, and second, that no one has a right to it.

However, this account of mercy faces two main difficulties. The first and most serious one is that in many cases it seems hard to deny that not showing mercy is morally wrong and blameworthy, that at times agents are under a *duty* to act

mercifully. We often speak of so and so “deserving mercy” or, we say that Bloggs “ought to be merciful.”

The second difficulty stems from the application of the notion of supererogation to mercy. As David Heyd has shown in his book on supererogation, an essential feature of supererogatory acts is their “continuity” relative to obligatory acts, namely, their realizing “*more* of the same type of value attached to obligatory action” (Heyd 1982, 5–6). However, this condition is not easily fulfilled in the case of mercy (assuming mercy is an instance of supererogation); what type of value is realized by a certain class of obligatory acts, which merciful acts realize *more* of? Heyd suggests in reply that acts of mercy are “continuous with justice rather than with duty” (Heyd 1982, 163). According to the definition of the continuity condition, this seems to imply that merciful acts realize more justice than “standard” acts of justice (whatever these are).² But if this is the case then surely merciful acts should be obligatory, not optional. If a merciful punishment P is more just than a more harsh punishment P’, then imposing P would be our obligation and not a case of supererogation. Heyd says that in merciful acts we go “beyond justice” (Heyd 1982). Yet the “beyond” here—contrary to the standard case of supererogation—does not mean “more of,”³ but indicates the recommendation of a different criterion, *instead of* justice, to deal with a certain class of situations. (Just as Nietzsche, in *Beyond Good and Evil*, does not mean that we realize *more of* [traditional] good and evil, but rather that we free ourselves from traditional morality and adopt a new moral approach.)⁴

To this it might be answered that I have misinterpreted the nature of supererogatory acts; that their essence lies in the fact that they are harder to perform, and not in the fact that they are directed to more value of a certain type. By this token, merciful actions would not be more just than ordinary just actions, but just actions which it would be harder to perform. The problem with this answer is simply that cases of mercy involve no great effort or sacrifice on the part of the subject of mercy which would be unreasonable to expect from him or her. (Think, for instance, of a judge mitigating a punishment.) According to Ben-Ze’ev it is indeed typical of cases of mercy that “[t]he subject can give immediate help to the object *without investing time or effort*” (Ben-Ze’ev 1993, 2, italics mine). Merciful actions, therefore, neither realize *more* justice than ordinary just actions, nor involve any special effort in carrying them out. To define them as supererogatory would thus be misleading.

These difficulties have urged some philosophers to suggest adding a certain qualification to the first account to the effect that though many merciful acts are supererogatory, not all of them are; some are obligatory. This new view can be seen as a

kind of compromise—some merciful acts are obligatory while others are supererogatory.⁵ Yet, this view of mercy does not seem very promising either.

If the arguments of the previous section are sound, it is unclear what the criterion to distinguish between merciful acts that are obligatory and those that are supererogatory would be; the latter are not distinguishable, neither by their “quantity” of justice (or some other value), nor by the effort they require.

A second difficulty with the above account of mercy is the following. In cases where mercy is an obligation this seems to create a correlative right to mercy on the part of the object of mercy, a right of one to demand from another that she act mercifully towards her. This, however, seems obscure; usually people do not demand mercy, they beg for it. My conclusion then is that this hybrid account of mercy is not satisfactory.

A third account has been developed recently by George Rainbolt, according to which mercy is an *imperfect virtue*, i.e., a virtue “which generates imperfect duties” (Rainbolt 1990, 170). So, according to his account, one has an imperfect duty to carry out merciful acts with the implication that “[o]ne is not blamed for failing to act mercifully in any particular case” (Rainbolt 1990, 171).⁶ This account seems to solve some of the problems raised above. First, it suits our intuition that mercy is not, at least not always, a mere favor or gift freely given. Second, unlike the previous account, it utilizes only one deontological concept in the analysis of mercy (that of an imperfect duty), and thus renders the account simpler and avoids the difficulties in explaining the relation that obtains between the two concepts (obligatory acts of mercy and supererogatory ones). Third, it explains why, notwithstanding the fact that mercy is a duty, no one has a right to it. Since mercy is an imperfect duty, it does not impose a (perfect) duty to act mercifully towards any particular person in any particular case, so no (potential) object of mercy can have a right to mercy vis-à-vis any particular (potential) subject of mercy.

Rainbolt sees the following case as “a paradigm case of merciful action”:

A guard at a Nazi concentration camp supervises “medical tests.” Her job is to give an injection to each of a series of bound prisoners. The injection causes severe pain. One day she sees a child who looks very much like her own strapped in for the “tests.” She knows that there is no chance of being caught if she fails to give the injection. Moved by pity, she does not give the child the injection. (Rainbolt 1990, 170)

But isn't this paradigmatic case of mercy a clear instance of a *perfect* moral duty? Would anybody deny that the Nazi has an *obligation* in these particular circumstances not to give the in-

jection? So, *contra* Rainbolt, one *can* be blamed for failing to act mercifully in a particular case. To this objection Rainbolt replied as follows. No doubt the guard has an obligation towards the prisoner in this horrifying case, but it is one based on justice, not on mercy. The injection would be grossly unjust and immoral towards the prisoner, and *that* is why the guard has an obligation to refrain from giving it (and the prisoner has a correlative right not to be given the injection).

Yet, if this act of mercy is required in any case, independently of its merciful nature, the meaning and the normative role of mercy become unclear. Let us look at Rainbolt's definition of merciful acts. Such acts occur, he argues, "when someone treats another less harshly than one would normally expect them to be treated given the circumstances" (Rainbolt 1990, 170).

But why should there be any moral (albeit imperfect) duty to treat people this way? If treating them as harshly as expected given the circumstances (by whom? the agent? social conventions? the reasonable and impartial spectator?)⁷ is unjust, or immoral, then, in any case, one has an obligation not to treat them this way (as exemplified clearly by the Nazi case), and the duty of mercy turns out to be redundant. And if treating them this way is *not* unjust, what is then wrong with it? Surely it is not the mere contrast to what is expected that makes merciful acts morally valuable, but something that has to do with the *content* of these expectations, e.g., that they are unjust or irrational. I shall come back to the problem of defining merciful acts in Section II.

To sum up this survey, we seem to have at least three different views as to the deontological status of mercy:

1. That mercy is supererogatory;
2. That mercy is sometimes one's duty and in other times supererogatory; and,
3. That mercy is an imperfect duty.

This diversity of views and the difficulties inherent in each of them which I briefly mentioned demonstrate the problematic nature of mercy. This problematic nature is also shown in another point of disagreement, concerning the question of who the object of mercy is. Let us turn to look at some responses to this second question.

For many writers, and for the layman too, the typical object of mercy is some kind of *offender*, some kind of wrongdoer. In this manner, Heyd contends, that "[f]orgiveness, mercy, and pardon are all responses to some kind of wrongdoing" (Heyd 1982, 154) and, utilizing the same idea, Claudia Card refers in her "principle of mercy" to mercy being shown to "an offender" (Card 1972, 184).⁸ If the object of mercy is a wrongdoer, then

the notion of mercy is very tightly connected to that of *punishment*; mercy is shown by canceling, or at least mitigating, punishment. Correspondingly, the *subject* of mercy is the person who is authorized to impose punishments—that is, the judge (in criminal cases) or the king in earlier days.

However, it is not at all clear why a judge should involve considerations of mercy in applying the law, for, as Murphy puts it, “a judge sits as representative of the rule of law, not as representative of his own feelings.”⁹ If one is an offender, then one ought to be punished. And if one ought to be punished, then, other things being equal, it is false that judges should cancel or mitigate the punishment.¹⁰ Hence, Murphy concludes, the typical case of mercy is not that of officials mitigating a *punishment*, but of private persons reducing, or relinquishing altogether, a *debt* owed to them.¹¹ (This is the widely discussed case of Shylock and Antonio.) Note that in this view too the relation between the subject and the object of mercy is “typically established by legal or other institutional rules” (Hampton and Murphy 1987, 167), rules which determine that one person (the [potential] object of mercy) owes something to another (the [potential] subject of mercy). So, presumably, in this view, it is virtuous to show mercy and not to insist on payment of debts.¹²

A third view, however, widens the class of (potential) objects of mercy to include all the people who are suffering (or are about to suffer), all those whose suffering or misfortune can be alleviated by the agent. Consequently, on this view, the status of one as a potential subject or object of mercy is not determined by any institutional rules as in the previous views. Anybody can show mercy by helping the poor and the miserable.¹³

So we are faced with at least three answers to the question of who the object of mercy is:

1. An offender (accused in criminal case).
2. A debtor (sued by a creditor in civil law).
3. Any person suffering a substantial hardship.

Accordingly, we have at least three views as to the identity of the subject of mercy:

1. A judge (in a criminal case).
2. A creditor (on the basis of civil law).
3. Any person who has it within his or her power to alleviate actual or potential suffering.

The different views as to who is the object of mercy are closely related to another question regarding the moral status of mercy, that is, whether or not the object of mercy deserves

his or her misfortune. According to views 1 and 2, in typical cases, the objects of mercy *deserve* their hardship and usually acknowledge their dessert. Think again, of Shylock and Antonio. Antonio had a contract with Shylock and, therefore, Shylock had the full right to enforce it and take Antonio's flesh. Antonio acknowledged this right but, nevertheless, begged for mercy. The same holds for criminal charges when criminals admit they deserve a punishment but beg the court for merciful mitigation of it. In contrast, view 3, according to which any person suffering a misfortune is a possible object of mercy, seems to presuppose that in many cases, maybe in most of them, the object of mercy does not deserve his misfortune. Thus, for instance, Aristotle says explicitly that the object of mercy is "an evil, deadly or painful, which befalls one who does not deserve it."¹⁴

This problem regarding the relation between mercy and desert expresses the central puzzle about the moral status of mercy, i.e., defining the relation between mercy and justice. This puzzle has been the main focus of most of the philosophical literature on mercy. The puzzle has a few versions, the simplest presentation of which is the following: Mercy is considered a virtue; but in many cases, since mercy is granted to people who do not deserve it, "one who is merciful tempers, i.e., tampers, with justice. In these cases, a merciful person is being unjust. But being unjust is a vice."¹⁵

To sum up this section, I have pointed to some serious difficulties in understanding the nature of mercy and its deontological status, with no intention of exhausting all the difficulties in understanding this concept. My main purpose here has not been to criticize some particular view (or views) of mercy, but rather to try and help the reader to sense the general ambiguity and vagueness of the concept under consideration. The discussion in the coming section will suggest, so I hope, a partial explanation for the origin of the puzzling nature of mercy.

II

It is generally accepted that a distinction must be made between the moral status of acts and that of the motives that underlie them; an act might be right or obligatory even when stemming from a motive that is not morally good (or is even morally bad), and, by the same token, an act might be morally forbidden or wrong even when deriving from a noble motive. One common justification for this distinction and for the limitation of the deontological concepts to acts (irrespective of their motives) is based on the Kantian principle "ought implies can." Since one cannot produce a certain motive from choice at a given moment—especially if one has no disposition to this

motive—it is not the case that one ought to do so.¹⁶ Hence, moral obligations refer to actions, not to actions-from-a-particular-motive.¹⁷ The important implication of this distinction to the present discussion is that if a certain class of acts is obligatory, then it must be possible to define these acts satisfactorily with no reference at all to the motive(s) behind them. Thus, a distinction must be made between merciful *acts* and merciful *motivation*. And whereas it seems fairly easy to explain what a compassionate attitude consists of without referring to any particular act(s) that the merciful person does, it seems much harder, if not impossible, to explain what a merciful act consists of without referring to the agent's character or motivation. If such an explanation is indeed impossible, then it would be inappropriate to analyze mercy in terms of obligation. Since this point is central to my argument, I shall dwell on it at some length.

I mentioned earlier Rainbolt's definition of merciful acts, according to which—

(D1) A merciful act consists in treating somebody less harshly than one would normally expect to be treated in the circumstances.

My objection to this characterization in the previous section ran as follows: Either the less harsh treatment is more just than the normal treatment, or it is not. If it is, then the act falls under the class of obligations based on justice, and its characterization as merciful adds nothing to its moral status. Mercy then becomes superfluous. If it is not, it is unclear why we should attach any moral value to this less harsh treatment (maybe some people *should* be treated harshly). This dilemma is typical of all attempts to characterize merciful acts while disregarding their motive.

Let us then examine another definition of merciful acts, a definition that can be seen as a modification of the former. We saw in Section I that it is common to associate mercy with the role of judges. So instead of speaking of a "less harsh" treatment in general, the following specification might be suggested:

(D2) A merciful act occurs when a judge imposes upon a criminal a less severe punishment than the criminal deserves.

Yet, it is hard to see the moral basis of such behavior and I already touched on this in the first section. Taking the idea of retributive justice seriously implies that some people *deserve* to be punished and, furthermore, that it would be wrong *not* to punish them. To be sure, for a punishment to be just, it must

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fit the crime, that is, one should not be punished more severely than one deserves to be. But, by the same token, neither should one be punished *less* severely than one deserves. Why on earth should it be considered morally virtuous to impose upon a sadistic murderer a less stringent punishment than the one he really deserves? Why should the judge treat the wrongdoer “less severely than is required by retribution properly understood” (Hampton 1987, 160)? When judges behave this way, we often protest against them on grounds of justice, and at times are enraged by the discrepancy between crime and punishment.

To be sure, the hard retributivism I endorse is controversial and requires a fuller defense, than can be given here.¹⁸ It has recently been defended by Igor Primorac, who argues that “[j]ustice in these matters is to treat offenders according to their desserts, not more, *not less*.”¹⁹ Note that when I speak of the punishment “one really deserves,” I take this to mean one’s dessert *all-things-considered*, not one’s dessert according to some narrow legalistic approach. This “all-things-considered” judgment includes reference to the criminal’s motives, to his background, etc. (cf. Roberts 1968). Hence, I conclude, it is simply false to say that judges have a duty to impose less severe punishments than those that are deserved, or that such an imposition is morally desirable. A court that lets its feelings of sorrow and compassion determine its sentence betrays its role as a court of justice.²⁰

(D2) then fails to reveal the moral value of merciful acts and ought to be rejected. Indeed, I believe that the common association of the concept of mercy with judicial activity²¹ is confused and misplaced; either a certain punishment is (all things considered) just, in which case it ought to be imposed, or it is unjust, in which case it ought not to be imposed.²² I thus strongly object to theories of justice that lead to the conclusion that “the exercise of mercy, properly undertaken, is an exercise in dispensing justice” (Londey 1986, 5).

Note that I have reached this conclusion in presupposing a (hard) retributivist notion of punishment.²³ It certainly emerges if one presupposes a utilitarian one; if a certain punishment leads to the best consequences with respect to the general good it is certainly wrong—from a utilitarian point of view—for a judge to act mercifully and not to impose it.²⁴

Let us then try one more definition. Maybe we should define merciful acts simply as—

(D3) Acts that alleviate suffering and pain.²⁵

Yet, this seems to be far too general; on this definition mercy seems to collapse into the moral duty of beneficence, the *prima facie* duty to improve the situation of other human beings. Du-

ties of beneficence, contends Ross, “rest on the mere fact that there are other human beings in the world whose condition we can make better in respect of virtue, or of intelligence, or of pleasure” (Ross 1930, 21). Kant speaks in a similar way: “It is every man’s duty to be beneficent—that is, to promote, according to his means, the happiness of others who are in need, and this without hope of gaining anything by it” (Kant 1964, 120). In his *Lectures*, Kant makes a more detailed distinction:

Acts which have in view the welfare of another and are prompted by and proportioned to his wants are acts of kindness. They may be magnanimous, if they entail the sacrifice of an advantage; they are acts of benevolence if they alleviate real needs; and if they alleviate the extreme necessities of life they are acts of charity. (Kant 1979, 235)

In Kant’s view, the duty of beneficence is an instance of an imperfect duty. It does not entail that we ought to help any particular person in any particular circumstances, nor does it require that we are equally beneficent towards everyone in need. Hence, according to (D3), mercy would indeed be an imperfect duty, as Rainbolt argued; not, however, because of any unique feature of mercy, but because mercy would be part of a *different* (and imperfect) duty, i.e., beneficence or charity. So, on this definition too the moral value of mercy still seems mysterious.

At this point, one might be tempted to reply as follows. Though merciful acts are admittedly a subclass of beneficent ones, they do have a certain feature that enables a distinction to be made between them and “ordinary” beneficent acts, that is, the merciful motive of the act. Yet, this temptation must be overcome since for an act to be considered a duty it must be characterized independently of the motives that generated it.

To sum up. The philosophical debate about mercy, described briefly in Section I, presupposed that merciful acts constitute a more or less defined class of (valuable) acts, with the debate being about their exact deontological status. In this section, I have tried to show that all the definitions of this class fail, either because they fail to explain why merciful acts are morally valuable, or because they fall short of pointing to any special feature of these acts which justifies treating them as a distinctive moral class. My conclusion is, therefore, that merciful acts, qua acts, indeed do *not* constitute a separate class of morally valuable acts. There is no particular act, or class of acts, that one has a duty to carry out by virtue of the fact that it is a merciful act.

Having reached this conclusion it is now perfectly understandable why the writers on our topic, even those treating mercy as a feature of acts, could not avoid referring to the motive of the agent, thereby assigning to it—implicitly or explic-

itly—special importance in comparison to the role of the motive in other obligatory acts. Rainbolt is a good example of this point. In spite of his insistence that “one can *act* mercifully without compassionate motives” (Rainbolt 1991, 170), in a “paradigm case of merciful action” which he formulates (see the quotation in Section I), he speaks of the Nazi guard being “[m]oved by pity” (Rainbolt 1991, 170). In a similar way, Murphy argues that “it is analytical that mercy is based on a compassionate concern for the defendant’s plight” (Hampton and Murphy 1987, 173), and the same position is assumed by Jean Hampton, in spite of her holding a different view of mercy to that of Murphy—“mercy is the suspension or mitigation of a punishment that would otherwise be deserved as retribution, and which is granted *out of pity and compassion* for the wrongdoer.”²⁶

The argument developed here does not of course entail that merciful acts have no moral value but rather points to a different way of explaining this value. Merciful acts are valuable for two reasons. The first is that they fall under the category of beneficent acts and, *as such*, might be seen as a fulfillment of an (imperfect) duty. Merciful acts are just an instance of beneficence or of charity. The second reason is that in most cases merciful acts are executed out of a merciful motive and they are valuable, at least in part, *because* of this good motive. Since only the second reason does justice to mercy as an independent moral notion, I conclude that as a distinct moral quality, mercy, or merciful, is a feature of *persons*, not of *acts*.²⁷ As such, I suggest we see the moral worth of mercy as identical to that of compassion. Though the notion of pity, too, shares a few features with that of compassion (and of mercy), it has been persuasively shown that pity is morally inferior to compassion.²⁸ Thus, if the virtue of mercy is to be understood as a kind of emotion, compassion seems to fulfill this role in the most satisfactory way. In other words, as the interpretation of mercy in terms of compassion is the one that makes mercy more morally attractive than other interpretations, and as this interpretation is compatible with common usage of the term—this is the interpretation we should opt for. So, from now on, I shall use “mercy” and “compassion” interchangeably.

To be sure, much more needs to be said to explain the moral worth of compassion,²⁹ and to refute the views of some philosophers, notably Spinoza, Kant, and Nietzsche, who seem to have objected to its moral worth.³⁰ It is worth noting, however, that most of these critics would accept my basic distinction between merciful, in the sense of *beneficent*, acts, and the motive that underlies them. The difference between the analysis presented here and theirs would be that while I believe that compassion is morally worthy and is an important moral incentive, these philosophers disagree and view compassion as

something bad.³¹ One major reason for this condemnation of compassion is the claim that compassion usurps the agent's autonomy and self-control, since the agent is overwhelmed by factors external to him, i.e., the object's suffering. This reason also underlies the stoic objection to compassion, an objection that is based on the claim that it is an obstacle to self-sufficiency (*autarkia*). In this manner, Cicero argues that we can be generous without compassion "for our obligation is not to take upon ourselves bitterness and pain for the sake of others; it is simply, where possible, to relieve others of their pain."³²

III

I hope my argument up to this point has been persuasive. Nevertheless, some readers might still find it very difficult to abandon the prevailing intuition that conceives of mercy as a feature of acts. For these readers, a short glance at the history of our concept might be helpful.

According to Aristotle, who expresses a long-standing tradition, mercy, or pity (*eleos*)³³ is a certain emotion, "a kind of pain excited by the sight of evil, deadly or painful, which befalls one who does not deserve it" (*Rhetoric* II, Ch. 8). This is the meaning of *eleos* in Homer too; "the emotion roused by contact with an affliction which comes undeservedly on someone else."³⁴ Thus, in most of Greek literature, *eleos* is a kind of emotion, not a feature of acts.

A very significant change in the meaning of *eleos* is to be found in the Jewish and Christian sources. The change is expressed in the fact that the emphasis in *eleos* shifts from the *emotion* of mercy to the manifestation of this emotion in *acts*, in particular God's acts toward human beings. In the Old Testament, argues Esser, "[b]ecause of Yahweh's superiority as the partner in the covenant who remains faithful, his *eleos* was understood for the most part as a *gracious gift*" (Esser 1979, 595, emphasis added). This understanding of mercy is further emphasized in the New Testament, especially in Paul's writings, where the notion of mercy is related to that of *grace*; to ask for God's mercy becomes almost synonymous to asking for His grace, which primarily means salvation in heaven. "The post classical uses of mercy," says the Oxford English Dictionary,³⁵ "are developed from the specific application of the word to the reward in heaven which is earned by kindness to those who have no claim and from whom no requital can be expected."

The hypothesis I thus suggest is that the concept of mercy, which, in its Greek ancestor *eleos*, referred primarily to a quality of persons, obtained another meaning in the religious tradition, as a quality of acts. If the argument in the previous section is sound then the addition of this new meaning turns

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out to have caused quite a lot of confusion both as to the concept of mercy and as to its relation to the concept of justice.

It is interesting to note in passing another difference between the Greek and the Christian traditions, though this has no direct bearing on my main line of argument. I refer to the fact that the very notion of a gracious gift, so common in the religious sources, was a novelty in comparison to the Greek view; "In the vast majority of texts and documents relating to gifts in the classical world, it is quite clear that the giver's action is self-regarding, in the sense that he anticipates from the recipient of his gift some kind of return" (Hands 1968, 26). So whereas in the classical world nobody gives without anticipating a return, it is a basic contention of religion that God grants mercy and grace to His creatures with no expectation of a return, thereby serving as a model to His creatures to behave in the same way.

To return to our main point, surely the fact that the modern use of some concept is different from its use in the past, or even from its "original" use, does not, by itself, constitute any reason to prefer the earlier use. Yet, if we find that a certain concept "is in the state of grave disorder," as MacIntyre argued with respect to the language of modern morality in general,³⁶ this might indeed urge us to try and trace the source of disorder, and seek to return, so to say, to the state of order. We do not have to stick to our use of a concept when, on reflection, it turns out to be confused and problematic. If the original use makes more sense and offers a serious alternative, we should opt for it.³⁷

IV

On the face of it, if the conclusions of Section II are well established and mercy is not a quality of actions, this seems to solve once and forever the apparent conflict between mercy and justice. As there is no separate and defined class of merciful acts, there can be no conflict between acts of justice and mercy. There can be no act that is required by justice and, at the same time, forbidden by mercy. Contrary to a prevalent intuition, mercy does not temper justice, at least not in the sense of recommending a different (and less harsh) act.

Nevertheless, the conflict between mercy and justice is not easy to dismiss and, in the light of our previous discussion, it seems to reappear in a new guise. Our contention in Section II was that mercy is best understood as a kind of emotion, identical, or very close to, that of compassion. Yet, this leaves open the question of who the object of mercy is, or more specifically, whether the (appropriate) object of mercy is a person whose misfortune is justified, that is, deserved, or whether it is a person whose misfortune is undeserved. Many seem to believe

that the second option is true, that is, any human suffering is an appropriate object of mercy, whether deserved or undeserved. Thus, compassion is fitting toward a starving child in Africa, just as it is fitting toward a heartless criminal sent to his punishment. However, this view seems to raise the following dilemma: If P deserves (all things considered) a certain misfortune M, then (other things being equal) it is wrong to try and alleviate M, and inappropriate even to wish that such an alleviation will take place. But compassion typically does involve such a wish. It includes "a concern for or regard for the object's good. It is not enough that we imaginatively reconstruct someone's suffering.... In addition, we must care about the suffering and desire its alleviation."³⁸ Hence, even as a kind of emotion and not as a quality of acts, mercy seems to conflict with justice.

A possible solution to this dilemma might be suggested, utilizing the idea that "[s]ince compassion is a form of concern for others, other things being equal, it is morally better to feel compassion than not, even when compassion is not rationally justified" (Snow 1991, 200). Thus, it might be argued, even when the misfortune is deserved, compassion is still appropriate and morally desirable. Yet, this response seems to me highly counterintuitive. Consider, first, the following case. Suppose some sadist deliberately abuses a few helpless and innocent human beings. Suppose further that after a few days of this abuse, our sadist stumbles, falls, and as a result, suffers considerable pain. I find it hard to see how anybody could claim that in such circumstances it would be appropriate to feel compassion toward the sadist. It seems to me that it would not only be appropriate *not* to feel compassion in this case—it would be *inappropriate* to feel compassion. Compassion involves a desire to alleviate the object's suffering, while in the case under discussion the suffering should definitely *not* be alleviated; it is deserved.

Second, if a concern for others is always desirable, then it would seem that just as sorrow for their misfortune is appropriate, so is happiness in their good fortune. So, following this logic, if some criminal becomes rich and successful (as a result of his crimes), it is morally appropriate to feel happy for him. I find this absurd. Third, as the explicit purpose of punishment, especially in a retributivist view, is to cause pain and suffering to some human being, it is implausible to suppose that one should, at the same time, be sorry for the criminal and wish to mitigate his or her suffering. It cannot be both true that one should cause suffering to another human being (by punishing him) and also that one should seek to alleviate this very suffering (through compassion). Therefore, if there is such a thing as just punishment it is incompatible with compassion toward the bearer of the punishment.

If one still wishes to defend this view about compassion and dessert, namely, the view that compassion is appropriate even when the misfortune of its object is deserved, the following line of reasoning might be utilized. One might argue that the above objections indeed undermine the claim that compassion is appropriate *all things considered* in the cases under discussion, but they do not undermine the claim that compassion is *prima facie* appropriate in these cases. That is to say, there is always a (moral) reason to alleviate suffering and to feel compassion toward those who suffer, though this reason is sometimes overridden by a more stringent one. Thus, in the case of the sadist mentioned above, there is a fairly acceptable reason to wish the mitigation of his suffering, though this reason is overridden by the fact that the sadist deserves the suffering. And the same goes for punishments in general; the inflicting of suffering on a criminal is *prima facie* wrong and should be mitigated—though, all things considered, it is morally right, since the punishment is just and deserved.

This line of reasoning, however, does not seem to be of much help in the present case, since the view under discussion holds that compassion is not only *prima facie* appropriate, but appropriate all things considered. It contends that compassion should not be suppressed even when its object deserves the misfortune that befalls him or her.

My conclusion then is that, morally speaking, the object of mercy (construed as compassion) is not *any* human suffering, but only suffering that is *undeserved*. It is morally appropriate to feel sorry for a person who suffers an undeserved misfortune and to desire its alleviation.

Note that the basis for our conclusion that one should not pity deserved suffering is similar to the basis on which I suggested rejecting (D2) in Section II. Just as moral agents should not wish the alleviation of deserved suffering, judges should not reduce criminals' deserved punishment. The difference between the cases is that while in the former, the suffering is (usually) not caused by the agent, in the latter, the suffering is caused by the judge herself imposing the punishment upon the criminal. In both cases, however, if the suffering is just, it should not be mitigated.

Understood in this manner, not only is there no conflict between compassion and justice, but moreover, a concern for justice becomes an important ingredient of compassion itself and of its moral value. (This concern seems to determine, among other factors, the intensity of the emotion; the more unfair the suffering, the more intense the subject's identification with its victim and her desire to alleviate the suffering.)

However, this dependence of compassion on justice seems to bring back the very difficulty that the present account was supposed to overcome. The difficulty, which underlies the dis-

cussion in Section II, was based on the following dilemma; either mercy is interpreted in terms of justice (or some other moral notion), in which case it becomes redundant as a separate moral category, or it is not, in which case its moral value becomes unclear. Having made compassion depend on dessert, the same problem seems to reappear; as compassion is based on dessert-claims (the undeserved misfortune of the object of mercy), it is redundant as a separate moral category.

The reason, however, why the redundancy problem does not apply to the present account lies in the different role played by dessert in each account. The aim of Section II was to explain the moral value of certain acts. I tried to show that when such an explanation involves the application of other moral notions such as justice or beneficence, mercy becomes redundant. In contrast, the present account sees mercy as a kind of emotion, with the role of dessert changing accordingly. Emotions, as Ben-Ze'ev (1987) has emphasized, are very complex phenomena. Among other components, they include cognitive, evaluative, and motivational components. In the case of compassion, a cognitive component is the belief that the object suffers a substantial misfortune, an evaluative one is a sympathetic sorrow over the object's suffering, and a motivational one is a desire for the object's relief.³⁹ Thus, when I say that compassion depends on dessert, I take this to mean that a certain belief about dessert is one of the cognitive components of compassion, i.e., "a belief that the object does not deserve such a substantial misfortune" (Ben-Ze'ev 1990, 118). Obviously, the addition of this component to the description of compassion does not make the other components redundant in any way. In other words, saying that justice is an important component of compassion is not tantamount to saying that justice is the *object* of this emotion.

The idea that compassion should not be displayed unqualifiedly but should rather be directed to its proper object might help to refute a central charge against compassion mentioned earlier. I mentioned above Kant and Nietzsche's view, according to which compassion endangers the agent's autonomy and self-control as, in compassion, the agent is manipulated and controlled by its recipient. However, this possible danger is reduced if compassion is assumed to be a qualified and a rational response to the situation, one that accords with the situation's unique features. Such a response does not express a loss of self-control but its opposite.

My account of the relation between mercy/compassion and dessert is expressed clearly by Aristotle in the *Rhetoric*. According to Aristotle, "pity [*eleos*] is a kind of pain excited by the sight of evil, deadly or painful, which befalls one who does not deserve it." In contrast, when the evil is deserved, pity is out of place:

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[H]e who is pained at the sight of those who are undeservedly unfortunate will rejoice or will at least not be pained at the sight of those who are deservedly so; for instance, no good man would be pained at seeing parricides or assassins punished; we should rather rejoice at their lot, and at that of men who are deservedly fortunate. (1386b)⁴⁰

In his *Poetics* Aristotle draws the conclusions of this view with regard to the right structure of tragedy. As tragedy should arouse pity, the plot should describe a good man suffering bad fortune. But as it should arouse fear too, the situation must be fear-inspiring: "There remains, then, the intermediate kind of personage, a man not preeminently virtuous and just, whose misfortune, however, is brought upon him not by vice and depravity but by some fault..." (1453a6-10).

Since pity involves a concern for undeserved misfortune,⁴¹ it is close to indignation which, according to Aristotle, expresses a concern for undeserved fortune. "[B]oth emotions," says Aristotle, "show good character, for if we sympathize with and pity those who suffer undeservedly, we ought to be indignant with those who prosper undeservedly" (1386b).⁴²

This relation between mercy and dessert, so obvious to Aristotle, was implicitly rejected by the religious tradition. We saw earlier one shift in the meaning of mercy incited by religion, namely, the shift from mercy as an emotion to mercy as (also) a property of acts. A second change in the meaning of mercy in the Jewish and the Christian tradition involves the idea that mercy is appropriate toward all suffering, deserved or undeserved. This idea is connected with the religious intuition about the low value of human beings compared to the perfection and superiority of God; as their nature is corrupt, a fact emphasized especially in the Pauline writings, they really deserve the misfortunes that befall them. Nevertheless, human beings pray to God to show mercy and spare them suffering and pain. The fact that the mercy God shows to His creatures is not based upon justice is expressed by the closeness in the meaning of the terms "mercy" and "grace" in the New Testament.⁴³ Human beings, even the best of whom are merely "dust and ashes" (Genesis 28:27), can have no justice-based claims to the Lord, but can only beg for His mercy and grace. God indeed grants them His mercy and therefore, they too should act mercifully towards other people.⁴⁴ Mercy in God asks for mercifulness in man:

The salvation of those made alive for faith and renewal in the Holy Spirit is based on this mercy, not on good works. Hence they are admonished to pass on the mercy they have experienced cheerfully, so that mercy becomes one of the signs by which a discipline can be known ... while "unmerciful" is the lowest rung in the downward lad-

der of Romans 1:29 and so the completest negation of the knowledge of God. (Esser 1979, 597)

Here, then, are the seeds of the idea that mercy is a gift granted to its object, as well as of the idea that mercy and justice somehow conflict. I have tried to show, however, that this conflict is resolved if one, first, rejects the idea that mercy is a quality of acts and, second, rejects the view that compassion is appropriate toward all cases of human suffering, irrespective of the sufferer's desserts.⁴⁵

V

I began my discussion by pointing out some basic problems concerning the nature of mercy, problems connected to its deontological status and to its proper object. I continued by arguing that a major cause of these problems is the prevalent but false assumption that mercy, or merciful, is a quality of acts. That this is not the case was shown by the fact that no definition of merciful acts could be found that could account both for their moral (positive) value and also justify treating them as a distinct moral category, different from and independent of other categories, notably beneficence. This led us to the conclusion that mercy should be construed as a kind of emotion, namely, it should be interpreted in terms of *compassion*. Note again that the considerations that generated this conclusion were mainly *normative* ones.

We saw that this interpretation of mercy does not immediately remove the apparent conflict between mercy and justice, since, on the face of it, compassion involves a desire to alleviate any suffering, including suffering that is deserved. I refuted this latter view and argued that compassion is morally appropriate only toward misfortunes which are, all things considered, undeserved. Hence, there is no conflict between compassion and justice; on the contrary, compassion is morally desirable (among other reasons) *because* it involves a concern for justice.

I tried to show that my analysis of mercy and of the relation between mercy and justice is close to that of Aristotle who, like most Greeks, viewed mercy as a kind of emotion. In Aristotle's view, if one has a good character, then, as in most emotions, one displays compassion in a rational way, that is, in a way directed toward the appropriate people and in the right degree. More particularly, compassion is appropriate only when its object suffers an unjustified misfortune. An unqualified display of compassion toward any misfortune would indicate lack of self-control and would be a mark of irrationality, in the sense of not responding in a way that fits the real nature of the situation.

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Admittedly, this Aristotelian view is not the prevalent one nowadays. At least in English we seem to acknowledge the possibility of merciful acts which do not stem from a merciful motive,⁴⁶ and many people seem to think that compassion is appropriate toward all suffering, including suffering that is deserved. I suggested that the origin of this difference between the prevailing view and that of Aristotle is the influence of religion on our moral concepts.⁴⁷ The religious tradition, with its emphasis on the corruption and inferiority of humankind in comparison to God, perceived God's mercy to His creatures as a gracious gift granted to them in spite of their sins and of the fact they do not really deserve it. Consequently, first, mercy became associated with grace, something *granted* to one by another, and second, the relation between mercy and justice became unclear.

If I am right in the main argument of this essay, then our linguistic intuitions regarding the concept of mercy, especially regarding the idea that merciful acts constitute a separate moral category (independently of their motive), turn out to be rather misleading. Thus, maybe we should just give up this concept altogether and do without mercy. We *can* do without it, because compassion, on the one hand, and beneficence on the other, do the (moral) work well enough. And we *should* do without it because far from enriching our moral vocabulary, it serves to confuse and confound.⁴⁸

NOTES

¹ A very helpful list of criteria for the adequacy of theories about value concepts is formulated by Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1987), chapter one.

² Claudia Card, "On Mercy," *Philosophical Review* 81 (1972): 191, who suggests we understand the idea of "tempering justice with mercy" as "being more just than it would be possible to be in some cases were we simply to act in accord with institutional justice" (emphasis added).

³ Cf. Edmund Pincoffs, *Quandaries and Virtues* (Lawrence: University Press of Kansas, 1986), 92: "one cannot be too just."

⁴ Both Norvin Richards and George Rainbolt have suggested to me the possibility that being merciful is not being more *just* than one is obligated to be, but being more *compassionate* than one is obligated to be, and in this way mercy can fulfill the continuity condition. This, however, would have the odd result that acts which flow from "ordinary" compassion cannot be merciful acts, which, by definition, would be related to some special expression of compassion.

⁵ David Heyd, *Supererogation* (Cambridge: Cambridge University Press, 1982), 154; James Sterba, "Can A Person Deserve Mercy?" *Journal of Social Philosophy* 10 (1979): 13; Lyla H. O'Driscoll, "The Quality of Mercy," *The Southern Journal of Philosophy* 21 (1983): 235-236.

⁶ The idea that the adoption of mercy is an imperfect duty was suggested before Rainbolt by Murphy in Jean Hampton and Jeffrie G.

Murphy, *Mercy and Forgiveness* (Cambridge: Cambridge University Press, 1987), 183.

⁷ As Andrew Brien, in a private correspondence pointed out to me; we expect Mother Theresa and Raoul Wallenberg to be merciful; on Rainbolt's definition, then, these saints would probably not be really merciful.

⁸ H. Scott Hestevold, "Justice to Mercy." *Philosophy and Phenomenological Research* 46 (1985): 281.

⁹ See Hampton and Murphy, *Mercy and Forgiveness*, 174, note 8. Though Judge Mary M. Schroeder believes that justice with compassion is legitimate, and, at times, even desirable, she understands very well the opposite view ("Compassion on Appeal," In: "A Panel on Compassion and Judging," *Arizona State Law Journal* 22 [1990]: 45): "We shy away from judging that is too emotional. Judges must be guided by external principles, not visceral reactions. They must enforce, and must be perceived as enforcing, law, not whims."

¹⁰ The "other-things-being-equal" clause is intended to exclude cases where, for nonretributive reasons, imposing a certain punishment would be wrong, since, for instance, its social results would be very damaging.

¹¹ In adopting this view Murphy is influenced by Twambley. See P. Twambley, "Mercy and Forgiveness," *Analysis* 36 [1976]: 86, and Hampton and Murphy, *Mercy and Forgiveness*, 175, note 10.

¹² Murphy has tried to apply the private law paradigm to the criminal sphere. Hampton and Murphy, *Mercy and Forgiveness*, 179–180, and Brien's criticism of this suggestion.

¹³ Heyd recognizes this use of mercy too, see Heyd, *Supererogation*, 156. See also Sterba, "Can a Person Deserve Mercy?" 12; John Kleinig, "Mercy and Justice," *Philosophy* 44 (1969): 341–342; O'Driscoll, "The Quality of Mercy," 232.

¹⁴ *Rhetoric*, II, Ch. 8. I shall return to Aristotle's view in Section IV.

¹⁵ George W. Rainbolt, "Mercy: An Independent, Imperfect Virtue," *American Philosophical Quarterly* 27 (1991): 169. Rainbolt calls this puzzle "the dilemma of mercy."

¹⁶ See, for instance, William David Ross, *The Right and the Good* (Oxford: Clarendon Press, 1930), Ch. I.

¹⁷ Lawrence Blum, *Friendship, Altruism and Morality* (London: Routledge and Kegan Paul, 1980), 159. "One cannot have a duty or an obligation to have an emotion, or to act from an emotion."

¹⁸ Kant has always been thought of as a hard retributivist, though this interpretation has recently been challenged by B. S. Byrd, "Kant's Theory of Punishment: Deterrence in Its Threat, Retribution in its Execution," *Law and Philosophy* 8 (1989): 151; and Hampton and Murphy, *Mercy and Forgiveness*.

¹⁹ Igor Primorac, *Justifying Legal Punishment* (London: Humanities Press, 1989), 147–148. Emphasis added. For other sources endorsing hard retributivism, see Michael S. Moore, "The Moral Worth of Retributivism," in F. Shoeman (ed.), *Responsibility, Character and the Emotions* (Cambridge: Cambridge University Press, 1987), 179–219; Hestevold, Justice to Mercy; James Rachels, "What People Deserve," In: *Justice and Economic Distribution*, eds. J. Arthur and W. H. Shaw (Englewood Cliffs: Prentice-Hall, 1978), 159. For criticism, see David Dolinko, "Three Mistakes of Retributivism," *UCLA Law Review* 39 (1992), 1623–1657, who acknowledges the current revival of (hard) retributivism in the United States. This revival has influenced the in-

creasing use of the death penalty (Dolinko, "Three Mistakes of Retributivism," 1649) and the disregard for mercy that it involves. This disregard for mercy with respect to the death penalty has been strongly opposed by Paul Cobb, "Reviving Mercy in the Structure of Capital Punishment," *Yale Law Journal* 99 (1989): 389–409.

²⁰ Carla Johnson, "Seasoning Justice," *Ethics* 99 (1989): 553–562, objects to this incompatibility of justice and (what many people call) mercy, on the basis of the idea that if injustice is done, it must have an object, that is, it must be done against some person(s), while in the case of judges tempering a just punishment, no person can be said to be its victim. I find her argument very interesting, though I cannot give it here the attention it deserves. Briefly, I have serious doubts about the principle that every injustice must have an object who is its victim. Indeed the injustice caused by not punishing a criminal as he deserves might serve as a counter-example to this principle, not the other way round. I think the notion of justice presupposed here is what Johnson calls (but refutes) "cosmic justice" (562).

²¹ N. E. Simmonds, "Judgment and Mercy," *Oxford Journal of Legal Studies* 13 (1993): 55. "[I]t is within this context [of judgment], and in relation to the judicial role, that mercy has its most natural home."

²² Alwynne Smart, "Mercy," *Philosophy* 43 (1968): 345–359, who contends that most cases of mercy, i.e., cases in which judges mitigate a just punishment, are simply misnamed. See also Stephen Morse, "Justice, Mercy, and Crazy: A Review of *Madness and the Criminal Law* by N. Morris," *Stanford Law Review* 36 (1984): 1508: "Reducing sentences for consequential or desert reasons is not the exercise of mercy. Furthermore, why is a system that punishes all those who deserve it "an intolerable engine of tyranny?"

²³ Smart, "Mercy," 395: "[Mercy] makes strict logical sense in a retributivist view of punishment."

²⁴ H. R. T. Roberts, "Mercy," *Philosophy* 46 (1971): 353: "Mercy in the ordinary sense has as little application to a judge's decision on the retributivist as on the utilitarian interpretation." A powerful argument against the location of mercy in the judicial sphere can be found in Brien, "Saving Grace," 194–195.

²⁵ Kleining, "Mercy and Justice," 1969, who contends that the core idea of mercy is treating with benevolence those who are in need, distress, debt, or under threat of some sort, and who have no claim (be it of desert or entitlement). Also see Johnson, "Seasoning Justice," 1987: 117, who sees mercy as "a response to another's great need, given the recipient's lack of an effective claim to it."

²⁶ Hampton and Murphy, *Mercy and Forgiveness*, 158, again, my emphasis.

²⁷ Cf. O'Driscoll's view, according to which mercy "is an enduring disposition to respond benevolently to the distress and misfortune of others" (1983, 246). This statement, however, seems to me inconsistent with her claim on the same page that "[c]learly, someone can do acts of mercy without having the attitude they conventionally express."

²⁸ Aaron Ben-Ze'ev, "Why Did Psammenitus Not Pity His Son?" *Analysis* 50 (1990): 118–126; Aaron Ben-Ze'ev, "Mercy." Unpublished, and Eamonn Callan, "The Moral Status of Pity," *Canadian Journal of Philosophy* 18 (1988): 1–12.

²⁹ Several accounts of the moral value of compassion have been suggested recently. See A. Teuber, "Simone Weil: Equality as Compassion,"

Philosophy and Phenomenological Research 43 (1982): 221–238; Richard Taylor, *Good and Evil: A New Direction* (New York: Prometheus, 1985): chap. 15; L. Blum, "Compassion," In: *The Virtues: Contemporary Essays on Moral Character*, eds. R. Krushwitz and R. Roberts (Belmont: Wadsworth, 1987), 229–236; W. J. Prior, "Compassion: A Critique of Moral Rationalism," *Philosophy and Theology* 2 (1987): 173–191; Ben-Ze'ev, "Psammenitus"; and N. Snow, "Compassion," *American Philosophical Quarterly* 28 (1991): 195–205.

³⁰ See David E. Cartwright, "Kant, Schopenhauer, and Nietzsche on the Morality of Pity," *Journal of the History of Ideas* 45 (1984): 83–98, and the sources mentioned there.

In Nietzsche's case, I believe at least part of the criticism applies to what has recently become common to call pity, which is distinguishable from compassion exactly in those features which Nietzsche finds morally repugnant, for instance, the subject's belief in his or her superiority over the object. See Nietzsche 1982, section 224, and Ben-Ze'ev 1990: 118, 122.

³¹ See *Ethics*, Part 4, Prop. L, proof and note, and Immanuel Kant, *The Doctrine of Virtue: Part II of the Metaphysic of Morals*, trans. Mary Gregor (New York: Harper and Row, 1964), Section 34.

³² Quoted by A. R. Hands, *Charities and Social Aid in Greece and Rome* (London: Thames and Hudson, 1968): 82.

³³ I use "pity" here because this is the standard translation, though, in the light of recent discussion on the relation between compassion and pity, I believe "compassion" would be a much better translation.

³⁴ R. Rultman, quoted in H. Esser, "Mercy, Compassion," In: *The New International Dictionary of New Testament Theology*, Colin Brown, ed. (Grand Rapids: Zondervan, 1979): 594.

³⁵ Oxford English Dictionary, (Oxford: Clarendon Press, 1961),: vol. VI, 351.

³⁶ Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981), particularly chapters 1–2.

³⁷ Some important moral philosophers have suggested recently that the Greek approach to ethics is more promising than the modern one. See MacIntyre, *After Virtue*; Bernard Williams, *Ethics and the Limits of Philosophy* (London: Fontana Press, 1985); Taylor, *Ethics, Faith and Reason*, 1985. They constitute what I call the "Greek trend" in contemporary ethics.

³⁸ Blum, "Compassion," 232; Snow, "Compassion," 196–197; Ben-Ze'ev, "Psammenitus," 123.

³⁹ See Ben-Ze'ev, "Psammenitus," 118–119.

⁴⁰ Admittedly, Aristotle's *eleos* is a much more passive emotion than mercy. But I don't think this affects the point of the analogy drawn here, which concerns primarily the relation between mercy (or *eleos*), and desert.

⁴¹ According to Aristotle, this explains the fact that pity is more widespread among young people; as they think all men are virtuous and better than themselves, they easily tend to believe that they suffer undeservedly. See *Rhetoric*, 1389b8–9.

⁴² Since, in Aristotle's view, both pity and indignation are non-practical emotions (they are compatible with doing nothing), Aristotle does not count them as virtues, which are dispositions involving choice and self-directed action (See W. W. Fortenbaugh, *Aristotle on Emotion* [London: Duckworth, 1975], 82–83). Nevertheless, as emphasized above, they are

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indicators of a good character.

⁴³ See Esser, "Mercy, Compassion," 597.

⁴⁴ See the parable of the Unmerciful Servant in Matthew 18:23–25.

⁴⁵ These conclusions do not deny divine mercy but rather call for a different interpretation of it, the development of which lies beyond the scope of this paper.

⁴⁶ See, for instance, Rainbolt, "Mercy," 170

⁴⁷ On this influence in general, see especially Taylor, *Ethics, Faith and Reason*.

⁴⁸ I am grateful to many friends and colleagues for their comments on earlier versions of this paper: Aaron Ben-Ze'ev, Andrew Brien, Eliezer Goldman, Charlotte Katzoff, George Rainbolt, Norvin Richards, and Saul Smilanski. As none of these excellent readers seemed to agree with my thesis, their comments are especially appreciated. I hope that, nevertheless, the thesis presented here does have a grain of truth in it.

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